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## Letter Ruling 98-20: Use Tax on Antique Purchased Out-of-State

December 18, 1998

You request a letter ruling on behalf of your client, \*\*\*\*\* ("Exhibitor"). You ask us to rule that the transaction described below is not a taxable transaction for purposes of the Massachusetts use tax.

### Facts

The following is your representation of the facts upon which we base this letter ruling. \*\*\*\*\* ("Dealer") is registered as a Massachusetts vendor for sales and use tax purposes. Dealer's principal place of business is located in a state outside of Massachusetts. Dealer sold \*\*\*\*\* ("Antique") at auction in a state outside of Massachusetts seven months ago to an individual who is neither a citizen nor a resident of the United States ("Owner"). To date, Owner has paid approximately half of the purchase price of the Antique to Dealer. It is anticipated that Owner will pay the remainder of the outstanding balance due by the end of 1999. Under the conditions of sale between Dealer and Owner, and the law of the state where the auction took place, title passed to Owner as of the date of the auction. Possession of the Antique remains in the hands of Dealer in a state outside of Massachusetts. You state that under that state's law, no sales or use tax is due in that state.

Subsequent to Owner's purchase of the Antique, Owner, through Dealer, was approached by Exhibitor regarding the possibility of Owner making a philanthropic loan of the Antique to Exhibitor for temporary public display in Massachusetts. Owner wishes to lend the Antique to Exhibitor for temporary public display. The loan would begin before Owner has paid the balance of the purchase price for the Antique. Following any exhibition of the Antique in Massachusetts, Owner would take delivery of the Antique overseas.

In the event that Owner undertakes a temporary loan, Exhibitor would assume all responsibility for insuring the Antique against loss or damage while it is on display in Massachusetts for the duration of the loan, a period of several months. Under the terms of the proposed loan agreement, the temporary loan would be executed by an authorized agent of Owner to keep Owner's name anonymous to the Exhibitor and the general public. Owner will retain the right to revoke the loan of the Antique at any time and for any reason. Further, Owner will not receive any compensation from Exhibitor or any other party for the loan. You also represent that Owner will derive no federal or state tax benefit as a result of the loan of the Antique to Exhibitor.

Owner asserts that Owner purchased the Antique with the sole intent of adding it to Owner's private collection outside of the United States. Only after the sale was executed was Owner approached by

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Exhibitor, through Dealer, about a possible loan of the Antique to Exhibitor. Owner states that Owner's motivations toward entering into the loan agreement with Exhibitor are purely benevolent and are not for purposes of tax avoidance. However, Owner's loan of the Antique to Exhibitor raises the question of whether its temporary placement in Massachusetts after the sale pursuant to the loan agreement will be considered a taxable transaction for purposes of the Massachusetts use tax.

### Ruling

Based on the facts and circumstances in this instance, we rule that Owner did not purchase the Antique for storage, use or other consumption in Massachusetts. Therefore, the purchase is not a taxable transaction for purposes of the Massachusetts use tax. Neither Exhibitor, Owner nor Dealer would be required to pay Massachusetts use tax as a result of a loan of the Antique to Exhibitor for public display in Massachusetts.

### Discussion

Massachusetts law imposes a use tax on the storage, use or other consumption in Massachusetts of tangible personal property purchased for storage, use or other consumption in Massachusetts at the rate of five percent of the sales price of the property. G.L. c. 64I, § 2. The term "store" or "storage" is defined as "any keeping or retention in the commonwealth for any purpose except sale in the regular course of business or subsequent use solely outside the commonwealth of tangible personal property purchased from a vendor." G.L. c. 64I, § 1. "Use" is defined to include "the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business." Id. In addition, the terms "store" and "storage," and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside of Massachusetts for use solely outside of Massachusetts. Id.

Massachusetts law also presumes that tangible personal property shipped or brought to Massachusetts by the purchaser was purchased from a retailer for storage, use or other consumption in Massachusetts if the property was shipped or brought into Massachusetts within six months after its purchase. G.L. c. 64I, § 8(f). A taxpayer can rebut this statutory presumption by presenting sufficient evidence to establish that the property shipped or brought into Massachusetts was not purchased for storage, use or other consumption in Massachusetts. M&T Charters, Inc. v. Commissioner of Revenue, 404 Mass. 137 (1989), citing Towle v. Commissioner of Revenue, 397 Mass. 599 (1986). See also Defore v. Commissioner of Revenue, A.T.B. Docket No. 132830 (1987); The Macton Corporation v. Commissioner of Revenue, A.T.B. Docket No. 137660 (1993).

Under the facts and circumstances discussed above, Owner purchased the Antique more than six months ago. Therefore, the statutory presumption under G.L. c. 64I, § 8(f) does not apply. However, if the Antique was purchased by Owner with the intent to store, use or consume it in Massachusetts, use tax would nevertheless apply. Based on the facts you have presented, we conclude that Owner did not purchase the Antique for storage, use or other consumption here. The purchase is not a taxable transaction for purposes of the Massachusetts use tax. Any loan of the Antique to Exhibitor by Owner would not require Exhibitor, Owner or Dealer to remit use tax on this transaction.

Very truly yours,

/s/Bernard F. Crowley, Jr.

Bernard F. Crowley, Jr.  
Acting Commissioner of Revenue

MA:DMS:rmh

LR 98-20

